

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 19, 2006

The Judicial Conference of the United States convened in Washington, D.C., on September 19, 2006, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Kimba M. Wood,
Southern District of New York

Third Circuit:

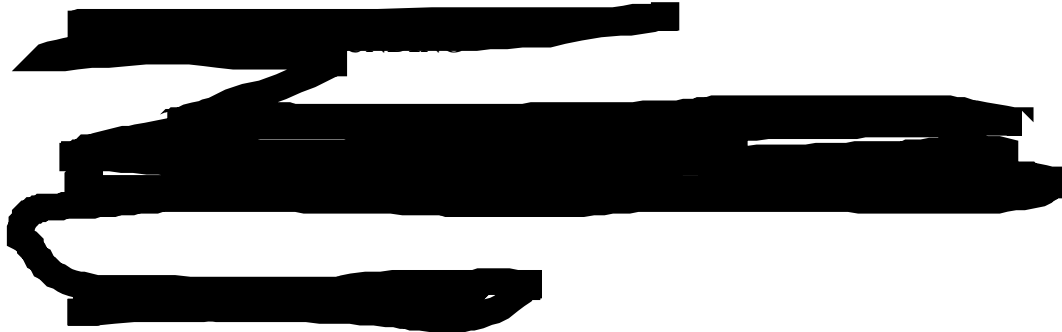
Chief Judge Anthony J. Scirica
Chief Judge Garrett E. Brown, Jr.,
District of New Jersey

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Edith Hollan Jones
Chief Judge Glen H. Davidson,
Northern District of Mississippi



The Committee on the Administration of the Magistrate Judges System reported that pursuant to Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), the Committee determined that vacancies in four district courts should be filled. The Committee approved an initiative to automate the list of retired magistrate judges who are willing and available to serve on recall and to post the list on the J-Net so that it can be viewed by chief judges and other court personnel seeking the services of a recalled magistrate judge. The Committee considered statistics on the gender and ethnic diversity of magistrate judges and agreed that the chair will send a letter to each court that receives approval to fill a magistrate judge position vacancy to urge the court to consider the importance of diversity in the magistrate judge appointment process.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

RULES IMPLEMENTING THE E-GOVERNMENT ACT

To implement the E-Government Act of 2002 (Pub. L. No. 107-347), the Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Appellate Rule 25 (Filing and Service), and proposed new Bankruptcy Rule 9037 (Privacy Protection for Filings Made with the Court), Civil Rule 5.2 (Privacy Protection for Filings Made with the Court), and Criminal Rule 49.1 (Privacy Protection for Filings Made with the Court), together with Committee Notes explaining their purpose and intent. The Act requires the Supreme Court to prescribe rules “to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically.” The proposed amendment and new rules are based on Judicial Conference policy regarding the redaction of certain personal information from court filings (JCUS-SEP/OCT 01, pp. 48-50; JCUS-SEP 03, pp. 15-16). The Judicial Conference

approved the amendment and new rules and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF APPELLATE PROCEDURE

See supra “Rules Implementing the E-Government Act,” pp. 32-33, regarding a proposed amendment to Appellate Rule 25 (Filing and Service).

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1014 (Dismissal and Change of Venue), 3007 (Objections to Claims), 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements), 6006 (Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease), and 7007.1 (Corporate Ownership Statement), and proposed new Bankruptcy Rules 6003 (Interim and Final Relief Immediately Following the Commencement of the Case — Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts), and 9005.1 (Constitutional Challenge to a Statute — Notice, Certification, and Intervention), together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the rules amendments and new rules and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. *See also supra* “Rules Implementing the E-Government Act,” pp. 32-33, regarding a proposed new Bankruptcy Rule 9037 (Privacy Protection for Filings Made with the Court).

IMPLEMENTATION OF THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Act), the Executive Committee, acting on behalf of the Judicial Conference, authorized distribution to the courts of proposed interim bankruptcy rules that could be adopted in individual districts by local

rule or general order to facilitate uniform practice under the Act, pending amendment of the Federal Rules of Bankruptcy Procedure (JCUS-SEP 05, p. 5). At this session, the Committee on Rules of Practice and Procedure proposed an amendment to Interim Bankruptcy Rule 1007 with a recommendation that it be distributed to the courts and adopted by standing order or local rule to take effect on October 1, 2006. The proposed amendment addresses problems arising from the debtor's obligation to file a certificate showing completion of a credit counseling course prior to commencing a bankruptcy case, by providing debtors a 15-day grace period within which to file the certificate. The Committee also submitted proposed revisions to Official Forms 1, 5, 6, 9, 22A, 22C, and 23, and new Exhibit D to Official Form 1, which include revisions implementing the proposed amendment to Interim Rule 1007 and new statistical reporting requirements mandated by the Act. The Judicial Conference approved distributing to the courts the amendment to Interim Rule 1007 and approved the revisions to the Official Forms. The effective date of the revised Official Forms is October 1, 2006.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Conference a proposed comprehensive style revision of Civil Rules 1-86 and the Illustrative Forms contained in the Appendix of Forms of the Federal Rules of Civil Procedure, to clarify and simplify them without changing their substantive meaning. Similar revisions have already been made to the Federal Rules of Appellate Procedure (JCUS-SEP 97, p. 82) and the Federal Rules of Criminal Procedure (JCUS-SEP/OCT 01, p. 70). The Committee also proposed minor substantive amendments to proposed restyled Civil Rules 4 (Summons), 9 (Pleading Special Matters), 11 (Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions), 14 (Third-Party Practice), 16 (Pretrial Conferences; Scheduling; Management), 26 (General Provisions Governing Discovery; Duty of Disclosure), 30 (Depositions Upon Oral Examination), 31 (Depositions Upon Written Questions), 40 (Assignment of Cases for Trial), 71.1 (Condemning Real or Personal Property), and 78 (Motion Day). Finally, the Committee proposed style changes to pending amendments (scheduled to take effect in December 2006) to Civil Rules 5.1 (Constitutional Challenge to a Statute — Notice, Certification, and Intervention), 33 (Interrogatories to Parties), 34 (Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and Other Purposes), 37 (Failure to Make Disclosure or Cooperate in Discovery; Sanctions), 45 (Subpoena), and 50 (Judgment as a

Matter of Law in Jury Trials; Alternative Motion for New Trial; Conditional Rulings) and to proposed new Civil Rule 5.2 (Privacy Protection for Filings Made with the Court) (*see supra* “Rules Implementing the E-Government Act,” pp. 32-33). The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 11 (Pleas), 32 (Sentencing and Judgment), 35 (Correcting or Reducing a Sentence), and 45 (Computing and Extending Time), together with Committee Notes explaining their purpose and intent, and a recommendation to abrogate the form entitled, “Model Form for Use in 28 U.S.C. § 2254 Cases Involving a Rule 9 Issue” contained in the Appendix of Forms to the Rules Governing Section 2254 Cases in the United States District Courts. The Judicial Conference approved the amendments and the recommendation to abrogate the model form and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. *See also supra* “Rules Implementing the E-Government Act,” pp. 32-33, regarding a proposed new Criminal Rule 49.1 (Privacy Protection for Filings Made with the Court).

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments and additions to the Federal Rules of Bankruptcy Procedure and Official Forms to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The proposed changes are based substantially on the interim rules, modified as appropriate after considering comments from the bench and bar as a result of the use of the interim rules. The Committee also approved for publication proposed amendments to the Federal Rules of Criminal Procedure and a new Criminal Rule, as well as a proposed new Federal Rule of Evidence. The comment period expires on February 15, 2007.